

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.82 of 2007**

- Vidyadhar S/o Kandarpoo, aged about 56 years, Occupation-Cultivation, R/o Village, Kadri, P. S. Bagbahar, Distt.-Jashpur (C.G.)

---- Revision Petitioner/Complainant**Versus**

1. Devadhi Ram, S/o Dhani Ram, Caste-Mahkul, Occupation Agriculture, Aged about 30 years
2. Nande Ram @ Gunu S/o Dhani Ram, Aged about 25 years, Caste-Mahkul, Occupation Agriculture
3. Dhani Ram S/o Neroparma, Aged about 65 years, Caste-Mahkul, Occupation Agriculture,

All respondents No.1 to 3 are resident of Village Bagaijhariya, P. S. Bagbahar, Distt.-Jashpur (C.G.)

4. State of Chhattisgarh through District Magistrate, Jashpur (C.G.)

---- Respondents/Accused Persons

None for Revision Petitioner.

For Respondents 1 to 3 : Shri R. S. Marhas, Advocate

For Respondent No.4/State : Ms. K. Tripti Rao, PL

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Gautam Chourdiya

Order on Board**Per Manindra Mohan Shrivastava, J.****19/11/2018**

This revision petition arises out of the impugned judgment dated 29-09-2006 passed by the Additional Sessions Judge, Jashpur, District Jashpur in Sessions Trial No.71/2006, whereby and whereunder, the learned trial Court having recorded a finding that the evidence of eye-witness is doubtful, has acquitted the respondents-accused by giving him benefit of doubt.

2. The prosecution case, on which, the respondents-accused persons were

tried is that in the evening of 05-01-2006, the respondents No.1 to 3 along with other accused had assaulted Daulat Ram and it is said that because of assault given by these persons, Daulat Ram died homicidal death. The matter was reported to the police leading to recording of merged intimation, Spot FIR followed by numbered FIR in the police station. Dead body was sent for postmortem and the postmortem report indicated that the cause of death was multiple injuries leading to shock and death. Respondents Dewadhi Ram, Nande Ram and Dhani Ram were accused along with another accused Buddheshwar Ram. The trial continued against the respondents herein, but, at that time, Buddheshwar Ram was absconding. The prosecution led the evidence of solitary eye-witness, Rajkumar, PW-2 to prove the incident. Learned trial Court, however, upon scrutiny of the evidence and the attending circumstances of the case and that the evidence of this witness, in so far as the incident is concerned, is not corroborated by any material particulars or by any other material attending circumstances and even the evidence of this witness could not be believed, acquitted respondents, giving benefit of doubt.

3. Having heard learned counsel for the respondents, we have gone through the impugned judgment.

4. As there was no one to represent the Revision Petitioner before us, we have heard learned counsel for the respondents No.1 to 3 and also heard learned counsel for the State. After going through the impugned judgment, we find that the learned trial Court disbelieved the ocular testimony of Rajkumar, PW-2 mainly on the ground that taking into consideration the aforesaid attending circumstances, particularly that in the present case, the evidence of Rajkumar is not supported by other evidence on record and that in the present case, the evidence of Rajkumar, PW-2 regarding the place of incident is different from the place, where the dead body was found.

5. According to learned counsel for the respondents No.1 to 3-accused persons, the entire case of the prosecution is mysterious and the evidence of Rajkumar, PW-2 could not be believed, because firstly, even if the incident happened in the night and according to this witness, the matter was reported early in the morning to the police and thereafter, the dead body was found, lodging of mere intimation, FIR and numbered FIR was subsequent to postmortem of the deceased having been completed at 10.55 AM on 06-01-2006. He submitted that it has come in the evidence of the prosecution witnesses that the wife of Devadhi lodged a report in the police station that rape was committed on her by Doulat Ram (deceased) and therefore, the needle of suspicion was on the respondent accused. He would submit that the written report followed by mere intimation and then FIR, they all were given after 2 PM on 06-01-2006 and this delay has not been explained nor the accused had an opportunity to do so because even the Investigating Officer of the case was not examined in the case.

6. Learned counsel for the respondents would submit that the learned trial Court has taken into consideration that the so-called injury reports of the two witnesses Rajkumar, PW-2 and Ghanshyam, PW-5 have also not been proved. Relying upon the decisions of the Supreme Court in the case of ***Johar and others vs. Mangal Prasad and another***¹ and ***Raj Kumar Khemka and another vs. State of Uttar Pradesh and another***², it is argued that the scope of interference by way of revision is very limited and until and unless, there were gross perversity, illegality and miscarriage of justice, the judgment of acquittal may not be interfered with.

7. On the other hand, learned State counsel submits that though the State has not filed any appeal, but supports the case of the prosecution.

1 (2008) 3 SCC 423

2 (2008) 17 SCC 662

8. In the present case, we find that as per the evidence of Rajkumar, PW-2, incident of assault on his brother Daulat Ram had taken place in the night, it was all dark and there is no person at the spot, holding torch, that means, the incident happened when it was all dark in the night. According to this witness, he went to the house of Ghanshyam, PW-5 to inform the incident and when Ghanshyam came out of his house, the respondent accused and other persons chased him to the house of Ghanshyam and assaulted Ghanshyam and this witness both. However, in his own written report, Ex.P-1, it has been stated that he had gone to the spot of incident along with Ghanshyam, but Ghanshyam does not claim to be the eye-witness of this case. He says that he was woken up by Rajkumar and then he opened the door. According to Ghanshyam, PW-5, he was not eye-witness of the incident.

Moreover, we find that Rajkumar, PW-2 has deposed in his evidence that he along with the family members was searching for Daulat Ram, who was missing since the incident of assault on him, claimed to be eye-witness of the incident. Thereafter, on the next morning, they went to the police station and informed to the police, but mere intimation, spot FIR (Dehati Nalishi) and numbered FIR was recorded in the afternoon i.e. 2 PM on 06-01-2006. The Investigating Officer of the present case has not been examined to explain, as to why report was not immediately lodged regarding missing of Daulat Ram in the morning itself, when according to this witness Rajkumar, PW-2, the matter was informed by him along with other family members in the police station. This assumes importance, because it is not a simple case of missing, but it is a case where this witness claims to be eye-witness of the incident. This witness discloses to the police that his brother was assaulted by number of persons in the dark at night and since then, his brother was missing, but as to why this report was not lodged in the police station, has not been explained by the

prosecution.

Curiously enough, the letter of the Police Officer for postmortem of the dead body, part of Ex.P-18 records the time as 18.00 hours, whereas the postmortem report, Ex.P-18 shows that the postmortem was conducted in the morning at 10.15 AM. Merg intimation, spot FIR and numbered FIR, all of these have been recorded in the afternoon of the day, long after postmortem was completed. How a letter seeking postmortem was sent by the Police Officer after 18 hours of the same date, stands unexplained by the prosecution.

There is abundance of evidence on record to show that there were disputes and there was allegation against Doulat Ram that he had committed rape on wife of Dewadhi Ram. Therefore, the defence version that when the assailant could not be seen in the night, then, on suspicion, long after the postmortem was done, a report was recorded in the police station, in which, allegations were made against the witness.

9. We have also found that in the present case, the learned trial Court did not examine the doctor, because the accused did not raise any doubt over the postmortem report. The prosecution did not lay credence to the testimony of Rajkumar, who is an injured witness, therefore, it ought to have examined the doctor, who prepared his medical report that it was not so. Even the doctor with regard to injury said to be sustained by Ghanshyam, PW-5, was also not examined. The Investigating Officer of this case was also not examined. We further notice that in the postmortem report, the time of death is said to be 36 hours since from the time of postmortem, whereas the incident is said to have happened only in the previous night of the date of postmortem. Learned trial Court has, after scrutiny of the evidence, disbelieved the version of eye-witness, Rajkumar, PW-2.

10. Taking into consideration the limited scope of interference through

Revision petition, in these circumstances, considering that more than one views are possible, including the view which was taken by the learned trial Court, we are not inclined to interfere with the impugned judgment of acquittal passed by the learned trial Court.

11. Accordingly, the revision petition is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Gautam Chourdiya)
Judge